



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,233	08/24/2001	Ray Frankulin	019411-001410US	3401

20350 7590 04/07/2005

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/939,233

Applicant(s)

FRANKULIN ET AL.

Examiner

Robert Mosser

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 27 January 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See attached.

DETAILED ACTION



Appellant's Notice of Appeal has been entered.



The appeal brief presented on January 27th, 2005, is in non-compliance with 37 CFR 41.37 for the following reason(s):

Appellant has indicated a single grouping of claims (1 and 2) to stand or fall together while those claims are imparted with two distinct rejections. This single grouping for the challenge of multiple rejections is improper. Appellant must either separate the rejected claims into groups reflective of the multiple rejections on appeal or provide a statement of basis for the claims under the same rejection that do not stand or fall together. (See Brief Paragraph VI –VII & 37 CFR 41.37. Hence while it is now asserted that claims 1 and 2 stand or fall together the applicant has challenged the standing of two separate rejections applied to two separate claims (1 and 2) based on one reject as applied to one claim.

Section V contains an incorrect heading and fails to incorporate supporting citations from applicants disclosure.

Section VI contains an incorrect title and the grounds of rejection need state no more than the rejection and claims subjected to the rejection. (Claims 1 through 10 stand rejected under 35 USC U.S.C. 102(b) as being anticipated by U.S. Patent No. xxx)

Art Unit: 3714

Section VII should be titled "Arguments" and address each ground of rejection under a separate subheading. Any claim(s) argued separately should be placed under a sub-heading

Section VIII is incorrectly labeled and should contain a copy of the claims involved in the appeal.

Sections IX and X are missing.

The appeal brief has been filed under the prior rule 37 CFR 1.192. New rules regulating appeals became effective September 13th, 2004. See Federal register, Vol. 69, No. 155/ Thursday August 12th, 2004 and

www.uspto.gov/web/offices/pac/oplapresentation.html for the September 16th, 2004 training presentation entitled "final rule making on Practice Before the Board of Patent Appeals and Interferences (BPAI). Appellant must submit a new appeal brief under the requirements as set forth by 37 CFR 41.37

Conclusion

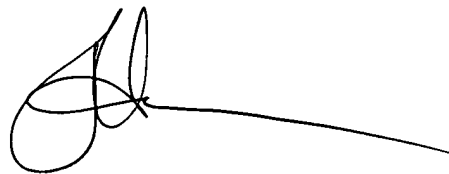
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM

A handwritten signature in black ink, consisting of a stylized 'J' followed by a long horizontal line.

JESSICA HARRISON
PRIMARY EXAMINER